1952.

File No. O Drugs/52

Legal Department

A BRANCH

P 13 (E)

Subject:—

Opinions under the Drugs Act-1940

File No. O Drugs/52

Gen. 194

578-A

C O N T E N T S.

Legal Department File No. O. Dr gs/1952.

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		Opinions under the Drugs Act, 1940.	
1.	5210-Conf.- 17-4-52.	Question whether a licensing authority can refuse the grant of a license to sell tincture Zingeberis on the ground that it is likely to be used as a beverage which will be a substitute for alcoholic drinks and will thus defeat the previsions of the Act.-	1-4.
2.	2951 11-2-52. 7233 7-5-52.	Application of the Rules to the State of Bombay.-	5-8.
3.	10214 23-5-52. 10675 27-6-52.	Question whether licences under the Act who have sold medicinal spirituous medical preparations, in large quantities in excess of these previously sold should not be regarded as persons unfit to hold licenses and their licenses should not be renewed furing the next licensing year.-	9-12. (P. 9 not typed)
4.	15066 28-7-52. 13458 18-8-52.	Question whether it would be competent for the State Government to enhance rates of fees for the grant of licences for sale and manufacture of Drugs.-	13-16. (pp. 13-14 not typed)
5.	223-Confl.. 28-2-52. 350-Confl., 10-4-52.	Drugs Rules- Sale of Tincture Zingeberis.-	17-20. (pp. 17-18 not typed)
6.	29848 11-12-52. 21365 18-12-52.	Question whether appointments of officers appointed as Government. Analysts can be made with retrospective effort.-	21-22.
7.	26488 4-11-52. 285/A 6-1-53.	Investing Drug Inspectors with powers of Public Prosecutors.-	23-30.

EVI. 19/6.

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Legal Department.

The question raised in these papers is whether a licensing authority can refuse the grant of a license to sell tincutre Zingeberis on the ground that it is likely to be used as a beverage which will be substitute for alcoholic drinks and thus will defeat the provisions of the Bombay Prohibition Act, 1949. Tincutre Zingeberis is a drug within the meaning of the Drugs Act, 1940. Section 18(a)(v) of the Drugs Act, 1940, provides that no drug can be sold in contravention of the provisions of Chapter IV of the Act or the rules made thereunder. Rule 59 of the rules made under the Drugs Act provides that the application for licences to sell the drug in question shall be made in Form No. 19 and a licence for the sale thereof shall be granted in Form No. 20. The rules included in Part VI of the rules do not provide for any particular conditions to be satisfied before a licence is granted. Rule 64 provides for such a condition in the case of Drugs included in schedule C. But tincutre Zingeberis is not a drug included in that Schedule. Neither section 18 of the Act nor the rules made under section 33 specify standards for the guidance of administrative discretion in the grant of licences for the sale of the drug in question. In the absence of any specific provision to that effect either in the Act or the rules, the refusal of a grant of a licence on the ground that the drug is likely to be used for the preparation of substitutes for alcoholic drinks would be held to be arbitrary and illegal. The exercise of discretion in the matter will be guided by what is known in America as the ordinary lawful licences rules (see Hart on Introduction to Administrative Law, p. 176) and action on the part of a licensing authority in refusing the grant of licences on the gmound stated in the report of the Controller of Drugs will not be in order. The question

regarding the misuse of the drug in question has been fully considered in the opinions of the R.L.A and the Advocate General and Shri Seervai accompanying the draft Prohibition Act (Amending) Bill forwarded to R.D. by R. U.R. No. 4496 dated 26th March 1952 and action as suggested in the said opinions will be proper to prevent the misuse of the drug in question.

Sd/- J.R.D. 14/4

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 5710-Confl., dated the 17th April 1952.

RVK. 18/6.

R.I. No. 2951/11-2-52.

The Government of Bombay have applied the Drugs Rules, 1945 to the State of Bombay by their notification in Genral Department No. 4121/33, dated the 26th January 1946. In the said notification the rules so applied are styled as "the Bombay Drugs Rules, 1946".

The Drugs Controller, Bombay, in his letter at p. 13 ante, states that the difference in year has caused and likely to cause confusion in the Inter-State correspondence. He has requested the L.S.G. & P.H.D., to consult the R.L.A. to overcome the difference.

The L.S.G. & P.H.D., in its note at p. 15 suggests that in order to overcome the difference, just below the heading of the Bombay Drugs Rules, the words "As adopted from the Central Drugs Rules, 1945" should be printed. That Department requests the L.D. to advise.

Please See U.R. to L.S.G. & P.H.D., No. 7223, dated the 7th May 1952.

KVY. 18/6.

Legal Department.

Any such change as suggested is not advisable. It will be too cumbersome,. Certainly the date cannot be changed from 1946 to 1945. As the intention of the Government of India was to have the numbering of the Rules the same, and this already exists, the Government of India's instructions have been carried out. The Department may in their correspondence use any such device for referring to the Bombay Rules as "Rule (number to be specified) of the Drugs Rules, 1945, as applied by rule 2 of the Bombay Drugs Rules, 1946, to the State of Bombay" or "the Drugs Rules, 1945, as applied to the State of Bombay"; but no amendment ought now to be made.

Sd/- J.R.V.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 7223, dated the 7th May 1952.

EVY. 18/6.

Legal Department

Drugs Act, 1940

The view taken by the Drugs Controller is correct. In the absence of a specific provision in that behalf it would not be possible to refuse to renew or to cancel the licences issued under the Drugs Act on the ground that the licences have sold Tincture Zingiberis in the large quantities (see Additional Secretary's opinions No. & 5710-Confl. dated 17-4-1952 and No. 350-Confl. dated 10-4-1952).

Sd/- J.R.D. 26/6

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 10675, dated the 27th 1952.

EVI. 18/6.

Office of the R.L.A.

Sub-section (1) of the section 33 of the Drugs Act, 1940, empowers the State Government to make rules for the purpose of giving effect to the provisions of Chapter IV after consultation with the Drugs Technical Advisory Board and after previous publication by notification in the Official Gazette. Under clause (c) of sub-section (2) of that section rules can be made inter alia laying down the fees payable in respect of licences ~~s~~ for the manufacture of drugs for sale, and for their sale and distribution. As sub-section (1) stands it is necessary to consult the Board before amending any such rules laying down the higher scale of fees. It is true that the consultation will be of an advisory nature; and in spite of the advice to the contrary of the Board the Government of Bombay can prescribe a scale of their choice. But in this connection attention is invited to the preamble to the Act and section 7. The Drugs Act had been enacted after the State Legislatures had passed resolutions under section 103 of the Government of India Act, 1935, empowering the Central Government to legislate. Under section 7, the Central Government has constituted an advisory committee called the Drugs Consultative Committee to advise the Central Government, the State Governments and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the States in the administration of the Act. (See also Introduction to the Drugs Rules, ~~19~~ 1945). This section is very wide and the rate of licence fees ~~mi~~ might also be a matter in which ~~has~~ the committee ~~m~~ might advise uniformity should be maintained. In view of the fact that the Drugs Act in its present ~~f~~ form has been enacted at the request of the State Government, it appears it will not be correct to dispense with the concurrence of the Government of India so long as the

Act stands as at present.

Sd/- P.M. LAD, 18/8

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 13458, dated the 18th August 1952.

EVY. 19/6.

Legal Department.

Drugs Rules
Sale of Tincture
Singiberis.

Rule 66 of the Drugs Rules makes specific provisions for cancellation and suspension of licences. There is no provision in these Rules for cancellation on the ground that the licensee is not a regular dealer in medicines. In view of this, it would not be open to the licensing athority to cancel the license merely on the ground that the licensee is not a regular dealer in medicine. Under sub-rule 15 of Rule 65, it is provided that the description "Chemist"; "Druggist" "Chemists and Druggists", "Pharmacy", "pharmacien" "pharmaceutical" etc or any combination these words, whether in conjunction with other words or otherwise, shall not be used by the licensee in any advertisement or on any label, signboard or name plate or otherwise in connection with the sale of drugs by retail unless the premises are under the personal supervision of a qualified person. This provision merely prohibits description as chemist etc. by the licensee unless the premises are under the supervision of a qualified person. It is not clear from the Drugs Controller's letter whether the licensees in question, who are retailing drugs, are using any such description as is referred to in Sub-Rule 15. If they are doing it, they would clearly contravence the Drugs Rules in which case their licences can be cancelled under Rule 66 and they can be prosecuted under section 27 of the Drugs Act for breach of the Rules.

Sd/- S.R.D. 10/4

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 350-Confl., dated the 10th April 1952.

EVY. 19/6.

L.D.R.I. No. 29848, dated 11-12-52.

Reply may be:-

/ Seen and returned. The view of the L.S.G. & P.H.D. that these appointments cannot be made with retrospective effect as suggested by the Drugs Controller, is correct. /

/ These fresh appointments can only be made with prospective effect. /

/ - A May be the reply.

R-L-A.
Dd: P.M.L. 16/12

Sd/- R.T.K. - 16-12.

U.R. to L.S.G. & P.H.D. No. 21365/A, dated the 18th December 1952.

EVY. 19/6.

Office of the R.L.A.

Under section 105(1) of the Factories Act, 1948, no court shall take cognisance of any offence under this Act except on a complaint by or with the previous sanction in writing of an Inspector. Under section 9(c), subject to any rules made in this behalf, an Inspector may, within the limits for which he is appointed, exercise such other powers as may be prescribed for carrying out the purposes of this Act. Under rule 14(c) of the Bombay Factories Rules, 1950, an Inspector shall, for the purposes of execution of this Act have power to prosecute, conduct or defend before a court any complaint or other proceeding arising under the Act or in the discharge of his duties as an Inspector. Reading these provisions together, it would be clear that an Inspector can not only institute a complaint, but also can prosecute or conduct before a court. The Inspectors under the Drugs Act, 1940, are appointed for the purposes of Chapter IV of the Act (section 21). Section 22 details the powers of such Inspectors and clause (e) provides that, subject to the provisions of section 23 and of any rules made by the State Government in this behalf, an Inspector may, within the local limits for which he is appointed, "exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder." Section 33, which also occurs in Chapter IV, gives the State Government power to make after consultation with the Board and after previous publication by notification in the Official Gazette rules for the purpose of giving effect to the provisions of this Chapter and clause (e) of sub-section (2) provides that such rules may regulate the powers and duties of Inspectors. Therefore, it is open to the State Government to make a rule on the lines of

rule 14(e) of the Factories Rules empowering the Inspector to prosecute, conduct or defend before a court any complaint or other proceeding arising under Chapter IV of the Act or in the discharge of his duties as such Inspector. Such a rule would be consistent not only with section 32(1) of the Act, which lays down that no prosecution under this Chapter shall be instituted except by an Inspector, but also with rules 51 and 52 of the rules already framed under the Drugs Act. Rules 51 and 52 prescribe the various duties of different Inspectors. The duties of the Inspector authorised to inspect premises licensed for the sale of drugs include investigation of any complaint in writing which may be made to him and institution of prosecutions in respect of breaches of the Act and the rules thereunder. Similarly duties of an Inspector authorized to inspect the manufacture of drugs include the duty to institute prosecutions in respect of the breaches of the Act and the Rules thereunder.

The only question that remains is whether, without such a rule empowering him to prosecute and conduct, he can prosecute or conduct a complaint filed by him. Under section 495(1) of the Criminal Procedure Code, any Magistrate inquirying into or trying any case may permit the prosecution to be conducted by any person other than an officer of Police below the rank to be prescribed by the Provincial Government in this behalf, but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Provincial Government in this behalf, shall be entitled to do so without such permission. The Court can permit an Inspector to prosecute or conduct cases for breaches of the provisions of the Drugs Act and the rules thereunder, but that would be within the discretion of the Magistrate. If Government desires that such Inspector

should have the power to prosecute or conduct cases, there would be no legal objection to make a rule under the Drugs Act on the lines of rule 14(c) of the Bombay Factories Rules.

Sd/- P.M. LAD, 5/1
Remembrancer of Legal Affairs.

U.R. to H.D., No. 285/A, dated the 6th January 1953.

EVY. 19/6.